MOHD FADZLI HASHIM

v.

MAGISTRATE, MAGISTRATE'S COURT, BUTTERWORTH & ORS

HIGH COURT MALAYA, ALOR SETAR
HISHAMUDIN YUNUS J
[CRIMINAL APPLICATION NO: 44-18-98]
17 FEBRUARY 1999

PREVENTIVE DETENTION: *Detention order - Detention order issued by magistrate - Medical certificate acted upon by magistrate - Omission of name of medical officer below signature - Whether rendered medical certificate invalid - Drug Dependants (Treatment and Rehabilitation) Act 1983, ss. 6(5),(6) & Drug Dependants (Treatment and Rehabilitation) (Forms) Rules 1983, r. 2 - Whether detention order lawful - Whether habeas corpus should issue*

The applicant applied for a writ of *habeas corpus* for his release from a detention center for drug addicts. The applicant alleged that his detention was unlawful on the basis that the magistrate in issuing the detention order had acted on an invalid medical certificate allegedly issued by a Government Medical officer. It was argued that the medical certificate was defective because the name of the medical officer who purportedly issued the certificate was not written below the alleged signature of the said officer as required by prescribed format.

The parties did not dispute that the name of the medical officer was omitted below the signature. The issue was whether the said omission rendered the medical certificate invalid resulting in the detention order issued unlawful. The respondent submitted that as the name of the medical officer was nevertheless mentioned in the body of the medical certificate, the said certificate should not be rendered invalid.

Held:

[1] There is no legal principle which requires the court to presume that the person signing the certificate must be the person whose name appears in the body of the certificate.

[2] Where the personal liberty of an individual is concerned, an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprives him of

his personal liberty. Further, art. 5 of the Federal Constitution provides that no person is to be deprived of his personal liberty save in accordance with the law.

[3] Subsections (5) and (6) of s. 6 of the Drug Dependants (Treatment and Rehabilitation) Act 1983 must be read together with the Drug Dependants (Treatment and Rehabilitation) (Forms) Rules 1983. The Rules require the name to be stated below the signature of the medical officer who purportedly issued the certificate.

[4] The words "purporting to be signed" in sub-s. (5) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 imply that the signature must be accompanied with the name of the medical officer signing. Since the name of the medical officer had not been stated below the signature, the purported certificate was not a certificate as envisaged by sub-ss. (5) and (6) of the Act. It followed that the magistrate did not have before him a certificate receivable by him under sub-s. (5). Thus, the magistrate had no power to issue the detention order in question.

[Application allowed.]

Case(s) referred to:
Ex parte Johannes Choeldi & Ors [1960] MLJ 184 ***(refd)***
Re Tan Boon Liat @ Allen & Anor et al [1977] 2 MLJ 108 ***(refd)***

Legislation referred to:
Drug Dependants (Treatment and Rehabilitation) Act 1983, ss. 6(1), (5), 28
Drug Dependants (Treatment and Rehabilitation) (Forms) Rules, 1983, r. 2
Federal Constitution, art. 5
Interpretation Acts 1948 and 1967, s. 15

For the applicant - Palani; M/s Palani
For the respondents - Zaliha Mohd Janis (Mohamad Abazafree Mohd Abas with her)

Reported by Usha Thiagarajah

JUDGMENT

Hishamudin Yunus J:

This is an application by a detainee, Mohd Fadzli, for the issuance of a writ of *habeas corpus* by this court for his release from a detention center for drug addicts known as "Pusat Serenti Karangan".

He alleges that his detention is unlawful by reason of the fact that the magistrate at Butterworth, in issuing the detention order, had acted on an invalid medical certificate allegedly issued by a government medical officer.

His counsel, in his written submission, contends that as the medical certificate was invalid, it follows that the detention order, was also invalid.

His counsel argues that the medical certificate was materially defective because the prescribed format requires the name of the medical officer who purportedly issued the certificate to be written below the alleged signature of the said officer, but this was not done.

That the name of the medical officer was not written below the signature is not disputed by the parties. What is in issue is the effect of such an omission. The learned Federal Counsel, Puan Zaliha, for the respondents, submits that such an omission does not render the order invalid because the name of the medical officer, although not stated below the signature, is, nevertheless, mentioned in the body of the certificate. The certificate states, "Saya Dr. Lim, Hung Hai seorang pegawai perubatan Kerajaan, setelah menjalankan ujian-ujian yang perlu ke atas:" In other words, the omission is a mere technical or formal defect.

Section 6 of the Drug Dependants (Treatment and Rehabilitation) Act 1983 (hereinafter referred to as "the Act") provides:

6. Magistrate's order which may be made on a drug dependant.

(1) Where a person who has undergone the tests referred to in section 3 or 4, and, in consequence of such tests, is certified by a government medical officer or a registered medical practitioner to be a drug dependant, the officer shall produce him, or cause him to appear, before a Magistrate and the Magistrate shall upon the recommendation of a Rehabilitation Officer and after giving such person an opportunity to make representations -

(a) is satisfied that such person requires to undergo treatment and rehabilitation at a Rehabilitation Centre, order such person to reside at such Centre for a period of two years to undergo treatment and rehabilitation and thereafter to undergo after-care in accordance with the provisions of this Act relating thereto; or

(b) ... [not relevant]

...

(5) A certificate under subsection (1) purporting to be signed by a government medical officer or a registered medical practitioner shall be receivable by a Magistrate without proof of the signature thereon, and the Magistrate shall accept it as proof of its contents, unless the contrary is proved.

The pertinent question is: can exh. R3 of encl. 3 be said to be a certificate envisaged by sub-ss. (1) and (5) of s. 6 of the Act?

Section 28 of the Act empowers the Minister of Home Affairs to prescribe the form to be used. The section states:

28. Rules.

(1) The Minister may make rules for the further, better and more convenient carrying out of the provisions or purposes of this Act and in particular, but without derogating from the generality of the foregoing, with respect to any or all of the following matters:

(a) ...

(b) to provide forms for use in connection with any matter under this Act;

Now, pursuant to the above provisions, the Minister in charge of internal security made the Drug Dependants (Treatment and Rehabilitation) (Forms) Rules 1983 (hereinafter referred to as "the Rules"). Rule 2 of the Rules stipulates:

2. **Forms.**

The forms to be used for the purpose of the Act shall be those appearing in the Schedule.

The Schedule to the Rules provides:

SCHEDULE

FORM 1

DRUG DEPENDANTS (TREATMENT AND REHABILITATION) ACT 1983

[Section 4]

CERTIFICATE AS TO DRUG DEPENDANCY

To:

The Magistrate/President*
...

Magistrate's/Sessions Court*

I, ..., a *government medical officer/registered medical practitioner, having carried out the necessary tests upon ... NRIC No. ... of ... certify that * he/she * is/is not a drug dependant within the meaning of the Act. +The dangerous

*drug/drugs through the use of which *he/she became a drug dependant *is/are ...

Dated the ... 19 ...

...
( )

Medical Officer/Registered Medical Practitioner

c.c.
Rehabilitation Officer, ...

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* Delete whichever is not applicable

+ Delete if the person is not a drug dependant or if it is not determinable what drug he is dependant upon.

The certificate as issued (exh. R3) reads:

BORANG 2

AKTA PENAGIH DADAH (RAWATAN DAN PEMULIHAN) 1983

Seksyen 6(1) APD

PERAKUAN TENTANG PENAGIHAN DADAH

Kepada:
Majistret,
Mahkamah Majistret,
Butterworth.

Saya Dr. Lim Hung Hai seorang pegawai perubatan Kerajaan setelah menjalankan ujian-ujian yang perlu keatas:

Nama: Mohd Fadzli Bin Hashim
KP/No: 670820-02-5575 (A 0807310). Alamat: No. 89 Kg Sg Layar Ujung, Sg Petani, Kedah.

memperakui penama adalah seorang penagih dadah dalam erti AKTA. Dadah-dadah Berbahaya, yang diguna yang menyebabkan ia menjadi seorang penagih dadah ialah: Morphine

Bertarikh pada 29 hb Mei 1998

[illegible signature]
...
Cop: PEGAWAI PERUBATAN
JABATAN KECEMASAN
HOSPITAL SEBERANG JAYA

S.K.: Peg. Pemulihan Dadah,
Daerah Sbg Perai Utara,
12000 Butterworth.

Bhg Narkotik Daerah,
Ibu Pejabat Polis Daerah,
Sbg Perai Utara
12000 Butterworth.

I observe that the marking purporting to be the signature of the medical officer issuing the certificate is illegible in the sense that no particular alphabet could be made out; and it is also a very brief marking such that it appears to be more of an initial than a signature.

The omission to state the name, in my judgment, is serious. It cannot be said to be a mere technical omission or defect. The doctor who signed the certificate must state his name. He must reveal his identity. It is important to know who actually signed the certificate in view of the seriousness of its contents and the legal implication that follows: a person's (whose name appears in the certificate) reputation is at stake and on the basis of that certificate he might be deprived of his liberty.

The necessity to state the name below the signature becomes all the more imperative when one considers that the requirement to state the name of the doctor signing is not merely an administrative requirement but a statutory requirement. It is a statutory requirement because the requirement is prescribed by the Minister by way of a subsidiary legislation. That the name has to be stated is clearly indicated by the blank space between the brackets immediately below the dotted lines meant for the signature. Needless to stress here, the schedule (which prescribes the form) is part of the Rules. Indeed, s. 15 of the Interpretation Acts 1948 and 1967 stipulates:

> 15. **Long title, preamble and schedules.**
>
> The long title and preamble and every schedule (together with any note or table annexed to the schedules) to an Act or to any subsidiary legislation shall be construed and have effect as part of the Act or subsidiary legislation.

It must, I think, with the above considerations (regarding liberty and reputation that I have just mentioned) in mind that the Minister, in prescribing the certificate, requires the doctor to state his name below his signature.

As an answer to Puan Zaliha's argument (that the name of the doctor was already mentioned in the body certificate), there is no legal principle which requires the court to presume that the person signing the certificate must be the person whose name appears in the body of the certificate.

In short, in my judgment, the signature must be accompanied by the name of the person signing. The signature is meaningless if the person signing failed to state his name clearly. In view of this defect, the certificate could not be said to be a certificate purporting to be signed by a medical officer as required by sub-ss. (1) and (5) of s. 6 of the Act; and, as such, it is not a certificate which is receivable by the magistrate under the said sub-s. (5). In the absence of a valid medical certificate under sub-ss. (1) and (5), the magistrate had no power to make the order of detention in question. If the magistrate had no power to make such an order, than the purported order is null and void.

In making my ruling in the present case, I am guided by the principle enunciated in *Ex parte Johannes Choeldi & Ors* [1960] MLJ 184, 186 where Rigby J said to the effect that, where the personal liberty of an individual is concerned, an applicant, in applying for a writ of *habeas corpus*, is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his personal liberty. The principle enunciated in *Ex parte Johannes* was cited with approval by the Federal Court in *Re Tan Boon Liat @ Allen & Anor et al* [1977] 2 MLJ 108 in the following terms:

> Further, preventive detention is a very serious invasion of personal liberty. Certain safeguards are provided by law for the protection of the subject and must be followed scrupulously. Where statutory requirements have to be complied with there must be strict compliance since it affects matters of such fundamental importance as the liberty of the subject. In *Ex parte Johannes Choeldi & Ors*. Rigby J said to the effect that where personal liberty is concerned an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his personal liberty. Where the detention is not in accordance with law such detention is bad and the person is entitled to be released forthwith.

However, more important in the context of the present case is art. 5 of the Federal Constitution which provides that no person is to be deprived of his personal liberty save in accordance with law. As the present case concerns a procedural defect, perhaps it would be quite relevant for me to cite *Re Tan Boon Liat* again. There, Lee Hun Hoe CJ (Borneo) ruled:

> I am inclined to agree with Encik Karpal Singh's contention that the expression "in accordance with law" in Article 5 of our Constitution is wide enough to cover procedure as well. Here the point is not whether the question of

procedure is more important under one Constitution than the other. If the expression "in accordance with law" were to be construed as to exclude procedure then it would make nonsense of Article 5.

To conclude, I hold:

(a) that sub-ss. (5) and (6) of s. 6 of the Act must be read together with the Rules;

(b) that the Rules require the name to be stated below the signature of the medical officer who purportedly issued the certificate;

(c) that, if the subsections are read together with the Rules, the words "purporting to be signed" in sub-s. (5) imply that the signature must be accompanied with the name of the medical officer signing;

(d) that since, in the present case, the name of the medical officer has not been stated below the signature, therefore, the purported certificate is not a certificate as envisaged by sub-ss. (5) and (6);

(e) that, as a consequence, the magistrate did not have before him a certificate receivable by him under sub-s. (5); and

(f) that, therefore, the learned magistrate has no power to issue the detention order in question.

[Application allowed.]